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Environmental Buyouts

Protection at a Price

Environmentalists working with the notion that the dollar can be more powerful than the regulatory sword have in the last two decades turned increasingly to an alternative strategy for preventing some types of potential pollution. Rather than lobby or regulate to stop such activities as mining of minerals and drilling for oil, governments, nonprofit groups, and other organizations have started to buy land—or mineral rights to land—to stop the activities from starting at all.

For the most part, the environmental community has welcomed these "white knights" armed with buyout dollars. But buyout critics—who span the political spectrum from far right to far left—claim that although buyouts appear on the surface to be an easy way out, they disrupt the marketplace and offer incentives for bad behavior.

Swap Meet

Some buyouts are meant to protect the species, landforms, or other features of a parcel of land, while others are meant to prevent polluting activities, such as mining or oil exploration, from taking place on the land. Regardless of the goal of the purchase, the issues linked to buyouts are essentially the same, says John Echeverria, executive director of the Georgetown Environmental Law and Policy Institute at Georgetown University.

Buyouts are one of four models of environmental protection. The other models are regulation, in which the state makes rules to protect the environment; free market environmentalism, in which no governmental activity, whether regulation or buyout, is allowed; and periodic payments, in which the government, a nonprofit organization, or even a private party makes regular payments to landholders who in exchange agree to restrictions on how they use their property for a limited period of time. The mix between these strategies varies with the political climate. Currently in the United States, Echeverria says, regulation has been at best stagnating in the mix. In some senses, environmental activists have been left little choice but to buy to protect.

An environmental buyout is basically a swap—money for land, money for mineral rights, land for

Creatas, USDA Forest Service, BLM, National Park Service, Photodisc, Chris Reuther/EHP land, land for mineral rights. Buying land to protect it or its contents is nothing new; in the United States, the concept really took off in the 1980s. During this period, public interest in the environment germinated hundreds of small land conservancy organizations and helped the Nature Conservancy—which has the mission of buying land to protect it—to become the largest environmental group in the world.

In the last two decades, governments at all levels started informal buyout programs as well, although Celia Boddington, a spokesperson for the U.S. Bureau of Land Management (BLM), says the BLM has, to her knowledge, never had a formal pollution-prevention buyout program. Instead, any purchases have been generated on an ad hoc basis by the BLM, Congress, or high-level administrators such as former secretary of the interior Bruce Babbitt, frequently after lobbying by environmental groups.

USDA Forest Service

Disaster averted? Reclamation work is done on the Glengarry Mine site (above), part of the New World mining area on Henderson Mountain in Montana. The site was purchased to prevent toxic contamination of waterways in nearby Yellowstone National Park by acid drainage from hardrock mining.

The last few years have seen a handful of pollution-prevention buyouts in the United States. For example, in 2000 the U.S. Department of the Interior paid $1 million to close the White Vulcan Mine, an open-pit pumice extraction facility near Flagstaff, Arizona. In 2002 American Electric Power engineered a buyout of virtually the entire town of Cheshire, Ohio, paying the 200 or so residents $20 million for their homes and their promise to not sue for exposure to past pollution from the company's nearby coal-fired power plant.

Also in 2002, the Bush administration agreed to spend $235 million to buy back oil and natural gas rights—which the federal government had sold to Chevron, Conoco, and the Murphy Exploration and Production Company in the 1980s—in the Everglades and in waters near the Florida Panhandle. This agreement, said President Bush at a 30 May 2002 news conference, will protect about 765,000 acres in the Everglades, Big Cypress National Preserve, the Florida Panther National Wildlife Refuge, and Ten Thousand Islands National Wildlife Refuge from drilling or spills related to drilling.

In late 2003, two Native American tribes—the Chippewa Mole Lake Band and the Forest County Potawatomi—struck a deal to pay $16.5 million for the Crandon Mine site in northeastern Wisconsin. The tribes acquired a tract of 6,000 acres, mineral rights to the land, and the mining company itself. This ended a battle of almost three decades to prevent the opening of the zinc and copper mine, which the tribes said would sully their reservations, wild rice ponds, and pristine waterways, including the Wolf River.

Simple or Simplistic?

Although activists have applauded land and mineral rights acquisitions as a solution that appears to offer long-term environmental protection, critics question how well buyouts really work. "The basic reality is that there is no way that we can buy our way out of the larger-scale environmental land management problems that we have," says Leigh Raymond, an assistant professor of political science at Purdue University who studies environmental policy. "As seductive as the option is, it's just not feasible, financially, to do that in the grand scheme of things. And secondly, I'm not sure we should. I think it's an open question whether and to what degree a property owner owns the right to do certain destructive things with his or her land."

There is also no guarantee, says Echeverria, that buyouts offer any real security in the long run. "There's a completely erroneous assumption that buyouts result in permanent protection of the resources," he says, "and it's just not so." Conditions that are placed on purchases can be easy to change, and many of the organizations that are buying land are small and not particularly stable. The managers of these organizations change, and with them may change the organizations' philosophies. If the government is buying the land, the rules governing how that land is treated can change with a new administration.

Conservative theorists such as Jay Lehr, a hydrologist and science director of the independent Heartland Institute research organization of Chicago, oppose buyouts—at least those that governments make—because they undermine the free operation of the capitalist system. When governments step in to purchase land, Lehr says, they affect the demand for that land and so influence the price that similar parcels will command. And when governments use taxpayer funds to buy land, they are transferring wealth from many individuals to a few. "We need to separate out what is a good economic decision and will benefit the greatest good for the greatest number within the nation," Lehr says, "from what is a rather underhanded political motivation that is covered up by fuzzy rhetoric from the environmental groups."

Ultimately, says Jim Jensen, executive director of the Montana Environmental Information Center, a nonprofit advocacy group in Helena, the taxpayers bear the costs when land is bought instead of regulated. If a government buys, of course, tax dollars are used. If a nonprofit group is doing the buying, the land is removed from the tax rolls. And if land is donated, the donor gets a tax break. There are also tax breaks for allowing conservation easements or covenants to be attached to land and for selling below market value. This is only fair, says Brook McDonald, president and CEO of The Conservation Foundation, a Naperville, Illinois, nonprofit land and watershed protection organization—since the public is calling for environmental protection, the public should bear at least some of the cost.

Right, But for the Wrong Reasons

Perhaps the best publicized pollution-prevention buyout in U.S. history—and one that points up some of the imperfections of the strategy—was the 1996 New World Mine land exchange. This gold, silver, and copper mine would have sat high on Montana's Henderson Mountain, not far from Yellowstone National Park. Although environmentalists worried that the land itself would be marred by the massive mining operation, their real fear was that highly acidic runoff from the mine would contaminate rivers, including those running through Yellowstone. A hardrock mine can produce acid mine drainage until all of its sulfides are consumed, which can take hundreds of years [for more information on acid mine drainage, see "The Earth's Open Wounds: Abandoned and Orphaned Mines," *EHP* 111:A154–A161 (2003)].

Activists also worried that cyanide, which is used to separate gold flakes from pulverized ore, could escape into the regional watershed. Cyanide spills—from collapsed or leaking structures that are meant to contain mine refuse or from accidents in handling the transportable dry crystal form of the chemical—have contaminated hundreds of miles of rivers in such locations as Brazil, Guyana, Kyrgyzstan, Latvia, Romania, Spain, and the United States, in some cases killing virtually all wildlife nearby. When cyanide is used to liberate gold from rock, it also frees other heavy metals, such as arsenic, mercury, and selenium, which can find their way into the water supply if containment structures fail.

The threat of a massive cyanide-dependent hardrock mine perched above Yellowstone became a *cause célèbre*. A 14 August 1995 *New York Times* editorial called for Congress to buy out—or failing that, for President Clinton to regulate out—the proposed mine. The Clinton administration ultimately paid $65 million to Crown Butte Mines, a U.S. subsidiary of Canadian mining giant Noranda, for mining claims on about 25,000 acres surrounding the New World site, and the mine was never built.

Like most pollution-prevention buyouts, the New World deal played well in much of the environmental community. "There was nearly universal support for the buyout when it was announced," says Jensen. "But in my estimation, the public was generally misled by the environmental community."

Although the mine should not have been allowed, Jensen says, the arguments made in favor of the buyout were overstated. He explains that the New World site was not pristine but rather in one of the most polluted areas in Montana, contaminated with pollution caused by historic mining there. And although a full-scale cyanide-based metal mine could have threatened Yellowstone, he says, the potential impacts were exaggerated.

But the primary reason that this deal didn't make sense, Jensen says, is that, as with other pollution-prevention buyouts, proper regulation could have accomplished the same goal for far less money. "There were a number of reasons not to build that mine," he says. "Their tailings impoundment was engineered in a place and with a design that was extremely likely to fail and would have violated the wetlands protection provisions of the Clean Water Act. There was perfect authority in federal law to deny that permit. The Clinton administration simply wasn't willing to do it."

Raised Expectations

An unfortunate side effect of beginning a pattern of buyouts is that it stimulates demand for future buyouts, Raymond says. When potential sources of pollution draw high buyout prices that are far above what similar, but benign, lands would command, Echeverria adds, a new type of prospecting is created: searching for land for which just the threat of development will draw an attractive payoff.

"[Habitual buyouts] create the availability of public and private funds for buyouts and encourage investors to scout out those kinds of opportunities, invest in problematic projects, and pursue environmentally destructive ideas in order to put themselves in the position where they can demand compensation," Echeverria says. Called "environmental extortion" or "environmental blackmail" by some activists and "fair compensation" by industry, such requests from landowners and claim holders often follow close on the heels of a high-profile buyout.

Montana, which houses both unspoiled wilderness and some of the most polluted mine sites in the country, is a case in point. Within a month of the New World deal, says Jensen, a Canadian speculator went into one of the region's most sacred, ecologically significant areas, a place called the Rocky Mountain Front, and staked mineral claims. The claim holder told the press that he would consider buyout offers from the federal or state government.

Similarly, another claim holder in Montana bought the rights to an 891-acre site in the Sweet Grass Hills that Jensen says includes some the most environmentally sensitive areas in the state and is also sacred to several Native American tribes. The claim holder has suggested that Congress approve funds for the BLM to buy out his holdings so that the property can be developed as a state park. Failing that, he suggested that the state itself make the purchase. In addition to the value of the land, the landowner has asked to be compensated for the value of the gold and silver—which he has estimated at 1.75 million ounces—that he planned to extract from the land. Such requests are common but unjustified if the area could not be mined legally in the first place, Raymond says.

There's no way to know whether a claim holder is prospecting for minerals or for buyouts, says Alan Septoff, research and information systems director of Earthworks, a Washington, D.C., environmental nonprofit formerly known as the Mineral Policy Center. Regardless, he says, just the existence of lucrative buyouts creates an expectation of similar deals among claim holders.

A Better Bargain?

If buyouts aren't the right answer, what is? Governments should regulate rather than compensate, Septoff says. A good start, he says, would be to reform the 1872 Mining Law, which allows individuals to claim certain federal lands if they can first prove that they could sustain a profitable hardrock mine and then come up with $5 an acre, plus a $100-per-claim annual fee.

Even without these changes, regulation—old, new, or revised—can be effective, Jensen says. The Crandon Mine deal in northern Wisconsin, for example, was brokered in large part because a series of companies were not able to persuade the state to issue permits for the mine to open, says Al Gedicks, executive secretary of the nonprofit Wisconsin Resources Protection Council. And in 1998 Montana adopted a citizen's initiative known as I-137—which the Montana Environmental Information Center proposed and mining companies are challenging—that prohibits new open-pit cyanide-based gold mines.

When you regulate effectively, Raymond says, buyouts become less necessary. "I worry that in the rush to embrace acquisition as a really useful strategy for conservation," he says, "that we'll lose sight of the fact that regulation is far more effective and, in some ways, far more important as a way of making sure that people who own land protect it."

Scott Fields